mises within the meaning of section 27 of the Act. In my view, he was so in possession for the following reasons:–

1. On the evidence before the District Court, even if the 1st defendant was not in occupation of the premises or any part thereof, which, in my view, he was, his office furniture was on the premises. The letting to the 2nd defendant also included an element of rent for the office furniture.
2. The second Notice to Quit dated September 6, 1979 (AB7) was on the basis that the 1st defendant was a tenant of the plaintiffs. He was required to "quit and deliver up possession" of the premises to the plaintiffs. See the Privy Council case of *Eng Chuan & Co. & Ors.* v. *Four Seas Communications Bank Ltd.*[1]
3. The second Notice to Quit, on the evidence before the Court, was served on the 1st defendant at the premises.
4. The learned trial Judge has found that on the date of the second Notice to Quit the 1st defendant, being the tenant of the premises, was letting it in such a way as to offend the provisions of section 15(1)(g) of the Act and on this part of the learned District Judge's judgment I am in complete accord.

In my judgment the learned trial Judge, having found for the plaintiffs against the 1st defendant under section 15(1)(g) of the Act should, as a necessary consequence thereof, have held that the 2nd defendant, by virtue of section 26 of the Act, did become and is now a statutory tenant of the plaintiffs. There will therefore be an order accordingly. Costs of the appeal and of those incurred in the District Court to the appellant (2nd defendant).

Appeal allowed.

Solicitors: *P. Suppiah & Co., Wee Swee Teow & Co.*

EMPRESS REALTY PTE. LTD. v. EMPRESS RESTAURANT

[D.C.A. (Rajah J.) January 28, 1983]
[Singapore – District Court Civil Appeal No. 2 of 1981]

Landlord & Tenant – Rent-controlled premises – Claim for possession – Notice to Quit to tenant who had already died, ineffectual.

This was an appeal by the Plaintiffs/appellants against the decision of the learned District Judge whereby he dismissed the plaintiffs' claim for possession against the 3rd defendants/ respondents, the claim for possession being that the 3rd defendant were unlawfully in occupation of rent-controlled premises known as Nos. 81 to 97 Middle Road.

The action was commenced against 3 defendants. (1) Kwan Seng (2) Kow Kup and (3) Empress Restaurant. The case against the first 2 defendants was that they had, without the plaintiffs' consent, assigned, underlet or parted with the possession of the premises to the 3rd defendants, and contrary to the provisions of the Tenancy Agreement made between the Liquidator of Eu Properties (Malaya) Ltd. and the 1st and 2nd defendants.

Immediately before the trial began, the 1st and 2nd defendants had died. The case proceeded only against the 3rd defendants. The latter argued that on a true construction of the said Tenancy Agreement as a whole, it was an agreement as between the Liquidator and the 3rd defendants and that, as there were at that time 10 others besides the 1st and 2nd defendants, who were partners in the firm, this operated to create a joint tenancy as between the 1st and 2nd defendants and the other said 10 partners.

Held, dismissing the plaintiffs' appeal: (1) the tenant or tenants who had derived his or their interest in the premises either through the Liquidator or his successors-in-title was or were not before the court. In these circumstances, the question of whether the 3rd defendants were at any time unlawfully in occupation of the premises could not have been determined by the court one way or the other;

(2) the Notice to Quit was addressed to "Mr. Kam Seng and Mr. Low Kup, trading as Empress Restaurant & Bar", some 11 years or so after the death of Low Kup. The said Notice was therefore ineffectual. At the time the action was commenced the contractual tenancy had not been determined.

CIVIL APPEAL.

Kirpal Singh for the appellants.
Joseph Ang for the respondents.

Cur. Adv. Vult.

Rajah J.: This is an appeal by the Plaintiffs/ Appellants against the decision of the learned District Judge whereby he dismissed the Plaintiffs' claim for possession against the 3rd Defendants/ Respondents, the claim for possession being that

the 3rd Defendants were unlawfully in occupation of rent-controlled premises known as Nos. 81 to 97 (odd numbers) Middle Road.

The action was commenced against three Defendants namely: (1) Kwan Seng, (2) Low Kup and (3) Empress Restaurant (sued as a firm). The Plaintiffs' claim for possession against the 1st and 2nd Defendants were on the grounds (1) that they had committed a breach of a condition of the tenancy under an Agreement, dated the 24th day of September 1954, between the Liquidator of Eu Properties (Malaya) Limited (in voluntary liquidation) of the one part and themselves, carrying on business in partnership with others under the style of Empress Restaurant and Bar at Nos. 81 to 97 (odd numbers) Middle Road of the other part in that the Plaintiffs (who had purchased the premises in 1963) or their predecessors in title had not given their consent in writing to the 1st and 2nd Defendants to assign, underlet or part with the possession or occupation of the premises to the 3rd Defendants and (2) that under section 27(a) of the Control of Rent Act they were not statutory tenants.

However, immediately before the trial began, counsel for the Plaintiffs informed the court that the 1st and 2nd Defendants had died and nothing further was done by the Plaintiffs in the action with regard to the named 1st and 2nd Defendants. The case proceeded only against the 3rd Defendants and the judgment of the learned trial Judge concerned itself with the 3rd Defendants.

During the course of the trial it came to be known that the 1st Defendant had died in 1955 and the 2nd Defendant in 1965 and this was not disputed then nor is it being disputed now.

The case for the Plaintiffs was that the 1st and 2nd Defendants had sublet or assigned to the 3rd Defendants contrary to the provisions of the Tenancy Agreement. With regard to the Tenancy Agreement the Plaintiffs contended that it created a tenancy only as between the 1st and 2nd Defendants and the Liquidator and so brought about a joint tenancy as between the 1st and 2nd Defendants whereas the 3rd Defendants contended that, on a true construction of the said Tenancy Agreement as a whole, it was an agreement as between the Liquidator and the 3rd Defendants and that, as there were at that time ten others, besides the 1st and the 2nd Defendants, who were partners in the firm, this operated to create a joint tenancy as between the 1st and 2nd Defendants and the other said ten partners.

Whatever be the true construction of the said Tenancy Agreement it is quite clear that the 3rd Defendants were holding the premises through the tenants, whoever they might have been, that is to say the 1st and 2nd Defendants or the survivor of them or the 1st and 2nd Defendants and the said ten partners or the survivor of them. It was not in dispute that the 2nd Defendant died, the later in time, in 1965. Mr. Kirpal Singh, counsel for the Appellants, conceded, and rightly so in my view, that when the 2nd Defendant died in 1965 his interest in the tenancy passed to his estate (this of course being on the assumption that counsel's contention as to the true construction of the Tenancy Agreement being the correct one). As to who the other said ten partners were there was no evidence before the court. This being so, the tenant or tenants who had derived his or their interest in the premises either through the Liquidator or his successors in title was or were not before the court. It follows, therefore, that in these circumstances the question of whether the 3rd Defendants are or were at any time unlawfully in occupation of the premises could not have been determined by the court one way or the other.

Further, the Notice to Quit on which this action is based is dated November 15, 1976 and is addressed to "Mr. Kam Seng and Mr. Low Kup, trading as Empress Restaurant & Bar", some eleven years or so after the death of Low Kup. In my view this Notice to Quit, in the circumstances of this case, is ineffectual, irrespective of which of the two views one may take, as to the true construction of the Tenancy Agreement. It follows that at the time this action was commenced the contractual tenancy had not been determined.

For these reasons the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Kirpal Singh & Co; Lee & Lee.*